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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,503	04/11/2001	Thomas E. Benim	DP6945 US NA	2453

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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/832,503	Applicant(s) BENIM ET AL.	
	Examiner Jane Rhee	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,11,18-32,34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,11,18-32,34-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Rejections Withdrawn

1. The 35 U.S.C. 103(a) rejection of claims 1-4,6-11,18-19,21-23, 31-32 over Tollette in view of Keiser has been withdrawn due to applicant's amendment on 11/26/2004.
2. The 35 U.S.C. 103(a) rejection of claim 20 over Tollette in view of Yamada et al. has been withdrawn due to applicant's amendment on 11/26/2004.
3. The 35 U.S.C. 103(a) rejection of claims 25-26,29-30 over Tollette in view of McFall et al. has been withdrawn due to applicant's amendment on 11/26/2004.

Rejections Repeated

4. The 35 U.S.C. 103(a) rejection of claims 27-30 over Tollette in view of Keiser has been repeated as previously made in office action 8/25/2004.
5. The 35 U.S.C. 103(a) rejection of claims 34-35 over Tollette in view of McFall et al. has been repeated as previously made in office action 8/25/2004.

New Rejections

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it

pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claimed that the face material is a single sheet having a first layer and a second layer in claim 1. A single sheet can not have two layers.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 25 recites the limitation "further including a second sheet of coextruded film" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Applicant did not claim a first coextruded film.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2,4,6-8,11,18-19,21-24,27-28,31-32 rejected under 35 U.S.C. 102(b) as being anticipated by Tollette (4273816).

As to claims 1,11,31-32, Tollette discloses an insulating label stock comprising a thermal insulating layer (figure 1 number 22) having a thermal resistance in the range of 0.05 to 0.5 CLO (0.0077 to 0.077 m²K/W) (see calculations below) laminated to a face material (figure 2 number 18) wherein the face material is a single sheet having a first layer (figure 2 number 18) and a second layer (figure 2 number 20), wherein the second layer inherently has a lower melting temperature than the first layer since the two layers

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are made from two different materials. As to claims 18 and 19, Tollette discloses the insulating label stock having a thickness in the range of 0.00025-.025 inches which is at least 0.0075 inch (0.190 cm) (col. 2 lines 65-67) as claimed by applicant.

Polypropylene-

Thermal conductivity value $C = 0.12 \text{ W/mK}$

$2/32 \text{ inches (col. line 56)} = 0.00158\text{m}$

$1/0.12\text{W/mK} = 8.33\text{mK/W}$

$8.33\text{mK/W} \bullet 0.00158\text{m} = 0.013\text{m}^2\text{K/W}$

Thermal resistance value of insulating layer polypropylene is $0.013\text{m}^2\text{K/W}$.

As to claims 2 and 6, Tollette discloses that the face material comprises paper (figure 2 number 18) or thermoplastic film comprising polyester, polyethylene or polypropylene (figure 2 number 12 col. 3 lines 8-15). As to claim 4, Tollette discloses that the insulating label stock comprises a printable coating on the face material (figure 2 number 16). As to claim 7, Tollette discloses that the face material is modified on the surface facing away for the thermal insulating layer to facilitate printing thereon (figure 2 number 18 and 16). As to claim 8, Tollette discloses that the face material is modified on the surface facing away from the thermal insulating layer to facilitate bonding to another surface with adhesive (figure 2 number 18 and 14). As to claim 21, Tollette discloses that the face material comprises a first layer (figure 2 number 18) and a second layer (figure 2 number 20) wherein the second layer is disposed between the thermal insulating layer and the first layer (figure 2 number 20). As to claim 22, Tollette discloses another face material disposed on the side of the thermal insulating layer

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facing away from the thermal insulating layer (figure 2 number 28). As to claim 23, Tollette discloses an adhesive primer applied to the surface of the face material facing away from the thermal insulating layer (figure 2 number 14). As to claim 27, 31 Tollette discloses that the thermal insulating layer is laminated between two sheets of face material (figure 2 number 22, 18, 28) wherein the label has a top edge (figure 3 number 63) a lower bottom edge (figure 3 bottom of label), and a side edge disposed at each side between the top and bottom edge (figure 3 number 64), and two sheets of face material are sealed together along the top, bottom and side edges (figure 5 number 42, 52). As to claim 28, Tollette discloses that the thermal insulating layer is laminated to at least one sheet of coextruded film comprising a first layer, and a second layer where the first layer and the second layer are made of different materials, and the second layer has a lower melting temperature than the material of the first layer (col. 3 lines 10-15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tollette in view of Keiser (5851617).

Tollette discloses the insulating label described above. Tollette fail to disclose that the thermal insulating layer comprises a fiberfill batt comprising thermoplastic fibers

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comprising polyester, polyethylene or polypropylene. Kieser teaches a substrate comprising of thermoplastic fibers (col. 3 lines 62) or foam (col. 3 line 62) for the purpose of creating a label stock.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Tollette with a fiberfill batt comprising thermoplastic fibers such as polyester, polyethylene, and polypropylene in order to create a label stock.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tollette in view of Yamada et al. (6306492).

Tollette discloses the label stock described above. Tollette disclose that the face material comprises a thermoplastic film comprising polyester, polyethylene or polypropylene (figure 2 number 12 col. 3 lines 8-15). Tollette fail to disclose that the face material comprises a biaxially oriented polyester film. Yamada et al. teaches label comprising a biaxially oriented polyester film for the purpose of providing superior mechanical strength, heat resistance, chemical resistance and dimensional stability (col. 1 line 15, 26-28).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Tollette with a face material comprises a biaxially oriented polyester film in order to obtain superior mechanical strength, heat resistance, chemical resistance and dimensional stability as taught by Yamada et al. (col. 1 line 15, 26-28).

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11. Claims 25-26,29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tollette in view of McFall et al. (6479431).

Tollette discloses the label stock described above. Tollette discloses another face material disposed on the side of the thermal insulating layer facing away from the thermal insulating layer (figure 2 number 28). Tollette fail to disclose a second sheet of coextruded film, wherein the second sheet of coextruded film comprises a first layer and a second layer. Tollette fails to disclose that the coextruded film of the first layer and of the second layer is a biaxially oriented polyester film.

McFall et al. teaches a second coextruded film comprising a first layer and a second layer for the purpose of adding strength and /or dimensional stability to the liner (col. 9 lines 45-47). McFall et al. teaches that the coextruded film of the first layer and of the second layer is a biaxially oriented polyester film (col. 4 lines 20-24) for the purpose of adding strength and /or dimensional stability to the liner (col. 4 lines 43).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Tollette with teaches a second coextruded film comprising a first layer and a second layer and that the coextruded film of the first layer and of the second layer is a biaxially oriented polyester film in order to add strength and /or dimensional stability to the substrate (col. 4 lines 43) as taught by McFall et al.

12. Claim 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tollette in view of McFall et al. (6479431).

Tollette discloses the label stock described above. Tollette fail to disclose that the first sheet and the second sheet is a biaxially oriented polyester film. McFall teaches the film of the first and of the second sheet is a biaxially oriented polyester film (col. 4 lines 20-24) for the purpose of adding strength and/or dimensional stability to the substrate (col. 4 line 43).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Tollette with the film of the first sheet and of the second sheet is a biaxially oriented polyester film in order to add strength and/or dimensional stability to the substrate (col. 4 line 43).

Response to Arguments

13. Applicant's arguments filed 11/26/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the table created by the applicant does not show that Tollette does not disclose or suggest a label stock comprising a thermal insulating layer having laminated thereon a face material that is a single sheet material, applicant claims that the face material is a single sheet of material having a first layer and a second layer. A single sheet of material cannot have two layers, however can have two *sides* of one layer. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In response to applicant's argument that Tollette label requires adhesives on both sides of the foam wherein adhesives decrease thermal resistance, although the

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calculations shown by the examiner show that the thermal resistance of Tollette is in the range of that recited in claim 1, examiner does not understand how pertinent it is that the adhesive is on both sides of the foam if the calculations show that the thermal resistance of Tollette is in the range of that recited in claim 1.

In response to applicant's argument that the examiner has erred when stating that Tollette discloses that the face material comprises paper or thermoplastic film since Tollette in fact discloses paper being adhered to the foam on one side and a film on the other side, applicant claimed that the face material comprises film, paper, or fabric, Tollette discloses that the face material is paper, figure 2 number 18 or film figure 2 number 12 wherein either number 18 or 12 can be considered as the face material since both layers are being adhered to the foam, figure 2 number 22.

In response to applicant's argument that Tollette fail to disclose that the thermal insulating layer being laminated to at least one sheet of coextruded film comprising a first layer and a second layer, Tollette discloses that the thermal insulating layer is laminated to at least one sheet of coextruded film comprising a first layer, and a second layer where the first layer and the second layer are made of different materials, and the second layer has a lower melting temperature than the material of the first layer (col. 3 lines 10-15). In col. 3 lines 10-15, Tollette discloses "coextrusions of films of polyethylene with other mommers such as vinyl acetate, and coextrusions of two different densities of an olefin" which inherently comprises films that have first layer and a second layer since coextrusion requires two layers.

In response to applicant's argument that the examiner changes the interpretation of the face material as examiner wishes, the applicant discloses the face material to comprise a film, paper or fabric material, wherein the face material is laminated on the thermal insulating material, so as the applicant refers to claim limitations dealing with film, the examiner points to the figure where the film is being disclosed and when the applicant refers to the claim limitations dealing with paper, than the examiner would point out to the figure where the paper is being disclosed. The face material can not be made out of both the paper and film therefore, the examiner would have to point out to different areas of the figure in order show where Tollette discloses that particular limitation.

In response to applicant's argument that the film layer of Tollette is not laminated on to the insulating layer, nor is the thermal insulating layer laminated to at least one sheet of coextruded film comprising a first layer and a second layer made of different material, first of all, Tollette does disclose that the film layer is laminated on to the insulating layer in figure 2 number 12 and 22. Secondly, the applicant never claimed that the insulating layer is laminated to at least one sheet of coextruded film comprising a first layer and a second layer of different material.

In response to applicant's argument that Tollette fail to disclose that the face material is modified on the surface facing away from the thermal insulating layer to facilitate printing thereon, Tollette discloses that the face material is modified on the surface facing away for the thermal insulating layer to facilitate printing thereon (figure 2 number 18 and 16).

In response to applicant's argument that the examiner asserts that the face layer is the paper layer and that the applicant claims that the face layer comprises a first layer and second layer, the examiner asserted that the face layer is the paper layer and the adhesive layer (figure 2 number 18 and 20). Applicant argues that the paper layer is not a laminate, however, applicant did not claim a laminate but a face material laminated on to the insulating layer.

In response to applicant's argument that layer 28 is not another face material because layer 28 is a releasable backer, applicant did not further define "face material" to eliminate the possibility for a releasable backer to be a face material. Applicant simply claimed that the face material is a single sheet having a first layer and a second layer, and the second layer that has a lower melting point than the first layer. Tollette discloses the second face material in figure 2 number 28 and 26.

In response to applicant's argument that Tollette fail to disclose sealing along the edges of two sheets of face material, in figure 2 the two face materials 18,20 and 26,28 are sealed to the insulating layer through out the entire area of the layer as shown in the figure therefore, the two face materials inherently are sealed along the edges of the two sheets.

In response to applicant's argument that Keiser merely discloses using microcellular foam for a release liner for potential cost advantages and not for an insulating layer, the release liner in Keiser is layer 16 in figure 2 and the insulating layer is 12 in figure 2 which Kieser teaches as a substrate comprising of thermoplastic fibers (col. 3 lines 62) or foam (col. 3 line 62) for the purpose of creating a label stock.

In response to applicant's argument that Keiser teaches away from using either foam or fibers as having insulating properties because Keiser further discloses there materials in a group with metal foils that are known as heat conductors and poor insulators, Keiser was used to teach a substrate comprising of thermoplastic fibers (col. 3 lines 62) or foam (col. 3 line 62) for the purpose of creating a label stock and that it would have been obvious to one having ordinary skill in the art to provide either foam or fibers since it is well known in the art as taught by Keiser to use either one material in order to create a label stock.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Keiser teaches a label stock with a substrate comprising foam or fibers and Tollette discloses a label stock comprising a layer of foam.

In response to applicant's argument that Yamada is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this

case, Yamada teaches laminated polyester film for label (col. 1 line 14) and the field of applicant's endeavor is a label stock.

In response to applicant's argument that McFall et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, McFall et al. discloses lamination and method for forming an information displaying label and the the field of applicant's endeavor is a label stock.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
February 11, 2005



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SUPERVISORY PATENT EXAMINER